

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ 176-3120  
Administrative Law Judge Division  
October 2, 2003

**R E S O L U T I O N**

RESOLUTION ALJ 176-3120. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

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The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

**The Categories**

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

### **Mixed or Unclear Category Proceedings**

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hl2

## Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

## Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

**IT IS ORDERED** that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on October 2, 2003, the following Commissioners voting favorably thereon:

/s/ WILLIAM AHERN

WILLIAM AHERN  
Executive Director

MICHAEL R. PEEVEY  
President

CARL W. WOOD  
LORETTA M. LYNCH

GEOFFREY F. BROWN  
Commissioners

Commissioner Susan P. Kennedy, being necessarily  
absent, did not participate.

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3120 (10/2/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A03-09-028</b> LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, for an order authorizing the construction of a two-track pedestrian grade crossing at Marianna Avenue and a two-track grade crossing at Eastern Avenue for the Eastside Corridor Light Rail Transit Line in the County of Los Angeles.	Ratesetting	Ratesetting	NO
<b>A03-09-031</b> SAN DIEGO GAS & ELECTRIC COMPANY, for authority to revise its gas rates effective January 1, 2003, in its Biennial Cost Allocation Proceeding.	Ratesetting	Ratesetting	YES
<b>A03-09-032</b> ARIES NETWORK, INC., dba ARIES TELECOMMUNICATIONS, for a certificate of public convenience and necessity to offer resale services to business and residential customers.	Ratesetting	Ratesetting	NO
<b>A03-09-033</b> EWI HOLDINGS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A03-09-034</b> GLOBAL TOUCH TELECOM, INC., for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A03-09-035</b> SAN DIEGO GAS & ELECTRIC COMPANY, for authorization to obtain long-term debt capital not to exceed the equivalent of U.S. \$660,000,000, of which not less than \$108,575,000 will be applied to, or used to reimburse its treasury for, the discharge of indebtedness and/or preferred stock; obtain an exemption from the Competitive Bidding Rule; enter into interest rate swaps, caps, collars and/or currency exchange contracts; issue and sell not more than U.S. \$80,000,000 stated value of preferred or preference stock, of which not less than \$76,000,000 will be applied to, or used to reimburse its treasury for, the discharge of indebtedness and/or preferred stock; and take all other necessary related actions.	Ratesetting	Ratesetting	NO

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3120 (10/2/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A03-09-036</b> AMCOM COMMUNICATIONS CORPORATION, for a certificate of public convenience and necessity to provide limited facilities-based and resold competitive local exchange services, and for intraLATA and interLATA toll authority (non-dominant interexchange carrier) services.	Ratesetting	Ratesetting	NO
<b>A03-09-037</b> HERNANDEZ, FERNANDO, dba THE DESERT RUBY, for authority to operate as an on-call passenger stage corporation between points in the City of Palm Springs and the Coachella Valley; and to establish a Zone of Rate Freedom.	Ratesetting	Ratesetting	NO
<b>A03-09-038</b> INLAND EXPRESS SHUTTLE, INC., for authority to establish Zone of Rate Freedom of Operations as a passenger stage corporation.	Ratesetting	Ratesetting	NO
<b>A03-09-039</b> LOCAL EXCHANGE TECHNOLOGIES, LLC, for a certificate of public convenience and necessity to offer local exchange and access services.	Ratesetting	Ratesetting	NO
<b>A03-09-040</b> DACOM AMERICA, INC., for registration as an interexchange carrier telephone corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A03-09-042</b> GLOBCOM INCORPORATED, for a Certificate of Public Convenience and Necessity to provide Resold and Limited Facilities-Based/UNE-P Local Exchange Telecommunications Services within California.	Ratesetting	Ratesetting	NO
<b>A03-09-043</b> NONPROFITS' UNITED VEHICLE INSURANCE POOL, for an order pursuant to General Order 160-A, deeming its liability insurance in compliance with the requirements of the General Order.	Quasi- legislative	Ratesetting	NO
<b>A03-09-044</b> EXPERTISE TECHNOLOGY INNOVATION, INC., for Registration as an Interexchange Carrier Telephone Corporation Pursuant to the Provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO